(3)

IN THE HIGH COURT AT BILASPUR

of 100/-

W.P. NO. 132 /2000

PETITIONER : Sainath Singh S/O Balram Singh, aged about 39 years, Resident of village Kunwarpur, P.S. Lakhanpur Tah. Ambikapur, Distt. Surguja (Chhattisgarh)

VERSUS

RESPONDENTS :

1. Bhagwat Prasad S/O Late Tegna Ram, aged about 45 years, Resident of village- Kedarpur, Tah. Ambikapur, Distt.- Surguja(C.G.)

2. Aitwar Sai S/O Sirdar, aged about 45 years, Resident of village Kunwarpur, P.S. - Lakhanpur, Tah. Ambikapur, Distt. Surguja(C.G.)

3. Dalvir Singh S/O Bodhrai, aged about 49 years Resident of village Kunwarpur, P.S.- Lakhanpur, Tah. Ambikapur, Distt.- Surguja(C.G.)

4. Presiding Officer Booth No.- 59, Gram Panchayat village- Kunwarpur, P.S. Lakhanpur, Tah. Ambikapur, Distt. - Surguja(C.G.)

P.R. No. 132 Presented by Shri Dayashankar Singh dated 14.12.00

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRITIN THENATURE OF CERTIORARI AND MANDAMUS ETC. DIRECTION/DIRECTIONS,ORDER/ORDERS

(S8) AFR

WRIT PETITION NO. 132 OF 2000

Sainath Singh

-v-

Bhagwat Prasad and others.

O R D E R

Post for 24-4-2002

Sd/-
Fakhruddin
Judge

SG. AFR

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR
WRIT PETITION NO. 132/2000

Sainath Singh
Vs.
Bhagwat Prasad and others

ORDER

Per Hon.Fakhruddin, J :

The petitioner had filed a petition before the Sub Divisional Officer, Ambikapur on the ground that in booth no.59 of gram panchayat, Kunwarpur wrong counting has been made. Prayer clause of the said petition is also to the effect for recounting of votes of booth no.59. Another prayer was that the election, whereby the respondent no.1 has been declared elected, be declared void.

2. The Sub Divisional Officer by the impugned order dated 8/8/2000 has allowed the petition to the extent that the recounting of votes of booth no.59 be made. Even on the recounting of votes, the petitioner could not succeed.

3. This petition has been filed by the petitioner on the ground that recounting in other booth nos.58 and 60 of gram panchayat, Kunwarpur be made.

4. Learned counsel for the respondent no.1 submits that this was not the prayer before the Sub Divisional Officer. Even no such averment was made in the said petition.

5. Rule 5 of the Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification For Membership) Rules, 1995 provides the contents of the petition, which reads as under :

> "5. Contents of the petition- An election petition shall- (a) contain a concise statement of all material facts on which the petitioner relies; (b) set forth with sufficient particulars, the grounds on which the election is called in question; (c) be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for the verifications of pleadings."

6. So far as the relief of the election petition regarding declaration of election to be void is concerned, it is relevant to quote Rule 21 of the aforesaid rules, which reads as under :

> **"Grounds for declaring election to be void**: (1)Subject to the provisions of sub-rule (2) if the specified officer is of opinion-(a) that on the date of his

election the returned candidate who was not qualified or was disqualified to be chosen to fill the seat under the Act; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination paper has been improperly rejected; or

(d) that the result of the election in so far as it concerns returned candidate has been materially affected-

(i) by the improper acceptance of any nomination; or

(ii) by a corrupt practice having been committed in the interest of the returned candidate by a person acting with the consent of the candidate or his agent; or

(iii) by the improper acceptance, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) by any non-compliance with the provisions of the Act or of any rules or orders made thereunder;

the specified officer shall declare the election of the returned candidate to be void.

(2) If in the opinion of the prescribed authority a returned candidate has been guilty by an agent of any corrupt practice, but the prescribed authority is satisfied-

(a) that no such corrupt practice was committed at the election by the candidate and every such corrupt practice was committed contrary to the instructions and without the consent of the candidate;

(b) that the candidate took all reasonable means for preventing the commission of corrupt practice at the election; and

(c) that in all other respect the election was free from any corrupt practice on the part of the candidate or any of his agent;

then the prescribed authority may decide that the

election of the returned candidate is not void."

7. A perusal of the election petition goes to show that the averments and allegations made in paragraph 3 the petition relate to illegality and irregularity regarding counting of votes at polling booth no.59. The relief claimed in paragraph 9 is that the recounting of votes be got done at polling booth no.59 and after recounting of votes result be declared.

8. Learned Presiding Officer vide his order dated 5/10/2000 considered the matter and by a reasoned order as per prayer directed the recounting of votes of polling booth no.59. Recounting was done on 14/11/2000 and even on recounting the result of the election remained the same and the election petitioner lost.

9. Before the Presiding Officer, counsel for the petitioner was not been able to point out any illegality or irregularity in recounting held on 14/11/2000. He however contended that recounting should also have been done at polling booth nos.58 and 60 as well. The said prayer was rejected by the Presiding Officer. Again this prayer has been reiterated in this petition by the counsel.

10. This Court has also considered the aspects and heard the learned counsel for the parties.

11. The recount has been claimed by the petitioner only in respect of booth no.59 and that prayer has already been granted. The trial of the election petition has to be in accordance with law. The petition has to contend the grounds as required in Rule 21 of the aforesaid rules. So far as election petition is concerned, it is not a common law remedy. It is provided by a Statute.

12. The Apex Court in the case of P.K.K. Shamsudeen vs. K.A.M. Mappillai Mohindeen and others, reported in AIR 1989 SC 640 has maintained the importance of secrecy as sacrosanct resting the burden on the candidate challenging election to allege and substantiate in acceptable measure by means of evidence that a prima facie case of a high degree of probability existed for recount. In paragraph 13 of the said judgment, the Supreme Court has held as under :

> "13. Thus, the settled position of law is that the justification for an order for

> examination of ballot papers and recount of votes is not to be deprived from hind sight and by the result of the recount of votes. On the contrary, the justification for an order of recount of votes should be provided by the material placed by an election petitioner on the threshold before an order for recount of votes is actually made. The reason for this salutary rule is that the preservation of the secrecy of the ballot is a sacrosanct principle which cannot be lightly or hastily broken unless there is prima facie genuine need for it. The right of a defeated candidate to assail the validity of an election result and seek recounting of votes has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a democracy and hence unless the affected candidate is able to allege and substantiate in acceptable measure by means of evidence that a prima facie case of a high degree of probability existed for the recount of votes being ordered by the Election Tribunal in the interests of justice, a Tribunal or court should not order the recount of votes."

13. In the instant case, recount of polling booth no.59 was prayed and the same was allowed. Recounting of polling booth no.59 was done and even after the result was declared, the petitioner lost. So far as the present case is concerned, it is accepted position that the averments made and prayer made regarding recounting of votes at polling booth no.59 and no averment is made in

the petition regarding recounting of votes in other polling booth nos. 58 and 60.

14. Having considered the facts and circumstances and the material available on record, no case for interference is made out. The relief prayed for has already been granted to the petitioner.

15. The petition fails and is dismissed with costs. Counsel fee Rs.500/-, if certified.

Sd/-
Fakhruddin
Judge